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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/065,514

10/25/2002

Terry Duane Evans

20493/1

2135

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07/27/2004

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EXAMINER

HONG, JOHN C

ART UNIT

PAPER NUMBER

3726

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,514

Applicant(s)

EVANS, TERRY DUANE

Examiner

John C. Hong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20040827.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-14 in the reply filed on 6/7/04 is acknowledged. The traversal is on the ground(s) that searching the both Groups is not burden to the Examiner. This is not found persuasive because searching two different groups is burden to the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-9 and 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2, line 1; Claim 3, line 1; Claim 4, line 1; Claim 5, line 1; Claim 6, line 1; Claim 7, line 1; Claim 8, line 1; Claim 9, line 1, "Apparatus" should be --The apparatus--.

Claim 11, line 1; Claim 12, line 1; Claim 13, line 1; Claim 14, line 1, "A tool" should be --The tool"

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4 and 8-14 are rejected under 35 U.S.C. 102(b) as being anticipated by JP10218552.

'552 discloses an apparatus (12) comprising:

an upper plate assembly (14,22,26,48,50) comprising a main portion (14), a first extension member (48)

and a second extension member (50), the extension members extending from the main portion at an angle; a lower plate assembly (16,42) connected to the upper plate assembly, a first side plate (44) and a second side plate (44), the side plates connected to the lower plate assembly, each side plate comprising a top and a bottom; and an engaging assembly (52) attached to said upper plate assembly and said lower plate assembly, engagement of the engaging assembly causes said bottom of the first side plate to move toward the bottom of the second side plate (Fig. 2); the upper plate assembly comprises a top and a bottom, the upper plate assembly further comprises a front roller assembly (26) and a back roller assembly (26), each roller assembly extending from the upper plate assembly bottom, wherein the first side plate is pivotably connected to the lower plate assembly, the first side plate comprising a roller assembly configured to contact and move along the first extension member; The apparatus further comprising a biasing member (18) connected to the first side plate, the biasing member for biasing the bottom of the first side plate away from the bottom of the second side plate (Figs 1-4; Translation).

'552 also discloses a tool (12) comprising: an upper plate assembly (14,22,26,48,50);

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a lower plate assembly (16,42) connected to the upper plate assembly, a pair of side plates (44) connected to the lower plate assembly; and an engaging assembly (52) attached to the upper plate assembly and the lower plate assembly, engagement of the engaging assembly causes a bottom of the first side plate to move toward a bottom of the second side plate (Fig. 2); at least one roller assembly (26) that extends beyond the lower plate assembly when the engaging assembly is engaged, wherein each side plate includes at least one roller assembly that extends beyond the side plate; the lower plate assembly is biased away from said upper plate assembly with at least one biasing member (18) , wherein the side plates are connected to each other with at least one biasing member (Figs. 1-4; Translation).

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham, 2 USPQ 2d 1647 (1987)*.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John C. Hong whose telephone number is 703-305-0779. The examiner can normally be reached on M-F(07:00-16:30)First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 703-308-1784. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John C. Hong
Primary Examiner
Art Unit 3726

jh
July 26, 2004